

Serial No.: 10/750,295

Docket No.: 19924

**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendments and the following remarks. Currently, Claims 1-5, 7-13, 16-21, and 23-35 are pending, with Claims 26-35 withdrawn from consideration.

Applicants' invention is a single sided laminate that is soft and stretchy, such as for use in user-friendly disposable personal care products including diapers incontinence products and the like. The invention includes material having a cloth-like fabric feel with a higher level of gathering and greater flexibility as a result of reduced overall basis weight. The laminate of this invention further reduces stiffness as a result of the elimination of one facing layer on the laminate and the use of lower basis weight elastic layer components. Such a laminate is more efficient in its use as an elastic material resulting in reduced production costs. Such a laminate also provides ease of use/extension, with better ability to retract since there is no drag of extra (second) facing layers. Essentially, such a laminate provides for higher levels of retraction with lower weights of polymer.

The nonblocking agent differs from the facing layer in that facing layer is applied with an adhesive and has a basis weight of about 5 to about 255 times the thickness of the nonblocking agent (Claim 1 nonblocking agent between about 0.2 to 2.0 gsm, and Claim 23 facing layer between about 0.3 and 1.5 osy). The facing layer may be gatherable with respect to the elastic layer such as when the laminate is relaxed and the nonblocking agent layer is not gathered since it is applied tightly to the elastic layer (Claim 37).

However, conventional laminates have not been able to meet these desired characteristics because inclusion of the second facing layers adds bulk, stiffness, cost and reduced retractive properties. The conventional laminates require the second facing layer in order to prevent roll blocking or roll sticking (measured as peel strength) such as when transporting the laminate for use in the finished application. Roll blocking can be a significant cause of downtime and maintenance cost for production lines making the above described personal care products.

KCC-1213

7

Ljpp

Serial No.: 10/750,295

Docket No.: 19924

Applicants' invention replaces the conventional second facing layer of the laminate with a nonblocking agent layer that is much lighter while preventing roll blocking. Thus ranges of basis weights and other characteristics are important nonobvious limitations of this invention.

#### Telephone Interview Summary

Applicants' attorney, John Poliak, thanks Examiner Steele for her comments and courtesies extended during the telephone interviews on 05 September 2007 and 17 September 2007 in this patent application. Applicants' attorney, John Poliak, also thanks Primary Examiner Cole for her comments and courtesies extended during the telephone interview on 17 September 2007 with Examiner Steele in this patent application. The current rejections and proposed claim amendments were discussed.

Specifically, agreement was reached that there is support in the specification for "not gathered". Agreement was reached that proposed claim language substantially as submitted as new Claim 37 of this paper would overcome the rejection based on Morman. Applicants' attorney understands that it is the Examiners' position that 10% antiblocking agent of Gage added to the film is functionally the same as Applicants' layer comprising a meltblown nonblocking agent applied over the elastic layer. Applicants' attorney understands that an open time of less than the 5 second minimum disclosed in Schmidt should also overcome the corresponding rejection. Additional remarks and limitations commensurate with at least a portion of the contents of paper were discussed.

No agreement was reached regarding allowable subject matter as the Examiners indicated that the proposed claim limitations necessitate an updated search. Applicants' attorney thanked the Examiners for their time.

KCC-1213

8

Vjpp

Serial No.: 10/750,295

Docket No.: 19924

**Amendments to the Claims**

Claims 1-5, 7-13, 16-21, and 23-25 have been examined, with no claims being allowed.

New Claim 36 recites the facing layer is gatherable as supported on page 19, lines 17-21. New Claim 37 recites the nonblocking is adhered tightly to the elastic layer and forms a not gathered layer as supported on page 22, line 32 to page 23, line 2. Applicants have not amended Claim 1 at this time to preserve it in condition to permit an appeal.

Applicants further clarify that the meltblown nonblocking agent is applied as a layer to the elastic layer as recited in Claim 1.

No new matter has been added by this Amendment. No additional fee is required because the number of independent claims remains unchanged and the total number of claims remains less than previously paid.

As discussed above, the Examiners said the new claims would require additional consideration and would not be entered. However, the remarks below are applicable even if the amendment is not entered. Applicants believe the entered claims are patentable for the reasons presented below, and reserve the right to appeal the claims without entry of the new claims.

**Claim Rejections - 35 U.S.C. §103(a)****A. Mleziva, Morman, Schmidt and Gage**

The rejection of Claims 1-5, 6-13, 16-21, and 23-24 under 35 U.S.C. §103(a) as being unpatentable over Mleziva et al. (U.S. Patent No. 6,057,024, hereinafter "Mleziva") in view of Morman (U.S. Patent No. 4,657,802 herein after "Morman") in further view of Schmidt, Jr. et al. (U.S. Patent No. 4,460,728, hereinafter "Schmidt") and Gage (U.S. Patent No. 5,459,186 herein after "Gage") is respectfully traversed. The Examiner maintains the prior rejection in the instant Office Action and refers to the 20 February 2007 Office Action for the specific rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation,

Serial No.: 10/750,295

Docket No.: 19924

either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there **must be a reasonable expectation of success**. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (MPEP § 2143, emphasis added).

These four references applied in combination in the Office Action taken individually or in proper combination fail to meet the three criteria for a *prima facie* case of obviousness for Applicants' claimed invention.

**Mleziva** is cited as the primary obviousness reference by the Examiner for disclosing a composite elastic material having continuous ribbon shaped filaments bonded to a gatherable layer. On pages 3 and 4 of the 20 February 2007 Office Action, the Examiner states that Mleziva is lacking five elements of Applicants' claims, including: 1) open time for the adhesive, 2) polypropylene adhesive, 3) meltblown nonblocking layer, 4) peel strength and 5) layer weights. More particularly, Mleziva does not teach or suggest a meltblown nonblocking agent layer applied to the elastic layer, the adhesive open time of between about 0.2 seconds and 1 minute, or the meltblown nonblocking agent deposited in an amount of between about 0.2 and 2.0 gsm, as recited in Applicants' independent Claim 1.

**Morman** fails to overcome the deficiencies of Mleziva to arrive at Applicants' claimed invention. The Examiner cites Morman for allegedly disclosing an antiblocking layer to eliminate adhesion. Morman actually teaches application of a **second facing layer** to the laminate or the use of a *removable facing layer*.

After gathering of the fibrous nonwoven gatherable web has occurred the composite nonwoven elastic web may be rolled up in rolls for storage and shipment. In order to avoid adhesion of the exposed side of the tacky fibrous nonwoven elastic web upon **rolling-up** of the composite nonwoven elastic web it is preferred for a **second fibrous nonwoven gatherable web** to be applied to the exposed surface of the fibrous nonwoven elastic web prior to the gathering step. Alternatively, **butcher paper** may be applied, either before or after gathering of the gatherable web, to the exposed tacky surface of the tacky fibrous nonwoven elastic web and **later removed** prior to utilization of the composite nonwoven elastic web. (Column 9, lines 32-45, emphasis added).

Serial No.: 10/750,295

Docket No.: 19924

The above section of Morman does not teach or suggest Applicants' single sided elastic laminate having a nonblocking agent, which allows *elimination of the second facing layer*. Applicants' invention also obviates the need for applying butcher paper to the laminate. Put another way, Applicants' invention is a lighter, more cost effective and less stiff laminate that eliminates the need for a second facing layer to prevent roll blocking.

Specifically regarding new Claim 37, Morman does not teach or suggest Applicants' nonblocking agent layer adhered tightly to the elastic layer forming a not gathered layer. In contrast, Morman requires two gatherable facing layers or removable butcher paper. Morman discloses facings layers of 21 gsm which is about 10 to about 100 times higher than Applicants' nonblocking agent (Claim 1, 0.2 to 2.0 gsm basis weight of the nonblocking agent layer). Morman does not teach or suggest reducing the facing layer by one to two orders of magnitude to arrive at Applicants' invention. Butcher paper is not gathered but it is also not adhered tightly to the elastic layer since it is removed before using the laminate. Butcher paper does not have the desired flexibility and cloth-like feel for the laminate. One skilled in the art readily appreciates the added cost and material handling complexity from adding a butcher paper layer during storage and transport.

The fibrous nonwoven web of Morman, cited by the Examiner as having a basis weight of 21 grams per square meter (gsm), is not equivalent to Applicants' nonblocking agent (Column 36, lines 25-30). Furthermore, this example in Morman has an elastic web with a basis weight of 66 gsm for a laminate totaling 87 gsm in basis weight and only about 42 percent degree of contracting (relaxation).

In contrast, Applicants' nonblocking agent is applied in a much smaller amount of between about 0.2 and 2.0 gsm (Claim 1), about 0.5 and 1.5 gsm (Claim 16), about 0.2 and 0.8 gsm (Claim 17), and about 0.2 and 0.5 gsm (Claim 17). Applicants' elastic layer has a basis weight of between about 4 and 20 gsm (Claim 20), and about 4 gsm and 15 gsm (Claim 21). Applicants' corresponding structure has a basis weight at most of 22 gsm. Put another way, one skilled in the art would not be motivated by or have an expectation of success to modify Mleziva based on Morman to arrive at Applicants' thinner lighter more flexible, more retractive

KCC-1213

11

J/jpp

Serial No.: 10/750,295

Docket No.: 19924

laminate having a only 25% (22 gsm/87 gsm) of the basis weight and no roll blocking issues (Claim 2).

Mleziva and Morman taken in proper combination do not teach or suggest Applicants' nonblocking agent layer. The other examples of Morman are also greater than Applicants' claimed basis weight range for the nonblocking agent layer.

Contrary to the Examiner's assertion that Morman discloses varying layer thicknesses, Morman actually teaches a "*stacked configuration*" where *additional* layers of nonwovens are bonded to the laminate (see, column 27, lines 21-25). As discussed above, the facing layer of Morman is already much thicker than Applicants' nonblocking agent layer. Adding *additional* thick layers provides no motivation or expectation of success to modify Mleziva in view of Morman to arrive at Applicants' single sided laminate with a thin nonblocking agent layer.

Morman thus *teaches away* from Applicants' single sided laminate, which has increased flexibility and reduced overall basis weight. Adding additional layers of a relatively thick material to a laminate that is already relatively thick cannot produce a thinner, more flexible laminate. Consequently, neither Mleziva nor Morman provide any suggestion or motivation to one skilled in the art to modify and/or combine these references to achieve a single sided elastic laminate having a nonblocking agent, as recited in Applicants' independent Claim 1.

Gage further fails to overcome the deficiencies of Mleziva and Morman. The Examiner cites Gage for its alleged disclosure of peel strength and composition. However, Gage is directed to a peelable thermoplastic film, which is not comparable to Applicants' claimed invention. Gage discloses a heat sealable film. Applicants' claimed invention is a laminate.

Applicants' claimed laminate includes a layer in an amount of between about 0.2 and 2.0 gsm that comprises a meltblown nonblocking agent. More particularly, the meltblown nonblocking agent is applied to the elastic layer. In contrast, the Gage film includes a "slip and anti-block agent" *blended into the film composition*, in an amount of 10-20% of the film composition, prior to extruding the film. This is not Applicants' nonblocking agent layer of the laminate.

The nonblocking agent recited in Applicants' Claim 1 is not comparable to Gage's slip and anti-block agent. The compositions of these

Serial No.: 10/750,295

Docket No.: 19924

nonblocking and anti-block agents are completely different (structure). Applicants' meltblown nonblocking agents include polypropylene, amorphous polyalpha olefins, and elastomeric polymers without tackifiers. Whereas, Gage's antiblock agents are erucamide and silica. The physical applications of these nonblocking and anti-block agents serve completely different purposes.

Nonblocking agents, as recited in Applicants' claimed invention, are effective when applied to the surface of a layer for preventing sticking when the layer or laminate is wound on a roll. In contrast, blending a slip and antiblock agent into a film composition effectively renders the *entire film* capable of being removed from a substrate to which the film has been heat sealed. The antiblock agent of Gage does not form a layer on one side of the laminate. Thus Gage does not provide any of the limitations of Applicants' claimed invention. There is not a suggestion to modify or an expectation of success to modify Mleziva based on Gage and Morman to arrive at Applicants' claimed invention.

Regarding Gage's peel strength, Applicants' invention desirably seeks to minimize peel strength between the rolled layers of the laminate, such as upon removal from a storage roll. In contrast, Gage needs some peel strength to function as intended. Gage discloses a film that is heat sealed to a substrate and then removable from the substrate. Gage requires some peel force to maintain the film on the substrate as "the elastic properties of the film should be sufficient to **resist the shear force** created when the substrate is **flexed or wound without separating from the substrate**" (column 1, lines 47-50, emphasis added). Put another, way modifying Gage to have a lower peel strength results in a film that falls off the substrate when flexed and is not fit for its intended purpose. All limitations of Applicants' claimed invention have not been supplied by the combination of the references.

The lowest peel strength value disclosed by Gage is 336 gm/ $\frac{1}{2}$  inch. In contrast, Applicants' claimed invention recites a maximum peel strength of less than about 200 grams. Applicants' invention strives for a low peel strength to prevent roll blocking when the laminate is being processed (Claim 2). Gage, on the other hand, is directed to a film which requires some peel strength as discussed above. One skilled in the art is not motivated by nor has an expectation of success to modify Mleziva in

Serial No.: 10/750,295

Docket No.: 19924

view of Morman and Gage to arrive at Applicants' peel strength of less than about 200 g (Claim 3), 100 g (Claim 4) and 50 g (Claim 5).

Consequently, Gage requires greater peel strength to function properly for packaging purposes. Lowering the lowest peel strength of Gage by more than 40% to arrive at Applicants' highest peel strength would render the Gage film unfit for its intended purpose. Thus, Gage fails to provide any suggestion or motivation to one skilled in the art to modify and/or combine the teachings therein with the teachings of Mleziva and Morman to achieve Applicants' claimed invention.

Regarding the composition of 10% antiblocking agent of Gage, Applicants again restate that 10% antiblocking agent added to the polymer and then extruded with the polymer into a film is not the same as Applicants' one sided laminate having a nonblocking layer opposite the facing layer. Furthermore, the Examiner on page 4 of the 20 February 2007 Office Action attempts to calculate a weight percentage of the nonblocking agent layer based on basis weights. Such calculations are not valid as discussed above nor are the values used correct.

The proper and commonly applied conversion factor for osy to gsm is 34. In this case, Applicants' laminate has an elastic layer, such as between about 4 and 20 gsm (Claim 20) and a facing layer, such as between about 0.3 and 1.5 osy (about 10 and 50 gsm; Claim 23), and the nonblocking agent layer, such as between about 0.2 to 0.8 gsm (Claim 17), and about 0.2 and 0.5 gsm (Claim 18). These numbers result in, at most, 5.4% (0.8/14.8) and 3.4% (0.5/14.5) respectively versus the 10-20% of Gage. Thus, Gage does not provide a motivation to modify Mleziva in view of Morman to arrive at Applicants' claimed basis weights. Put another way, Gage does not teach or suggest Applicants' basis weights.

Schmidt also fails to overcome the deficiencies of Mleziva, Morman, and Gage. More particularly, neither Mleziva, Morman, Gage, nor Schmidt, alone or in any combination, disclose or suggest a *single sided* elastic laminate that includes a layer comprising a *meltblown nonblocking agent* applied to an elastic layer in an amount of between about *0.2 and 2.0 gsm*, particularly whereby the layer comprising the meltblown nonblocking agent is *not in contact with a facing layer or an adhesive* when the laminate is in an unwound configuration. There is no suggestion or

Serial No.: 10/750,295

Docket No.: 19924

motivation in any of these references to modify and/or combine any of these references to achieve Applicants' claimed invention.

The Examiner cites Schmidt for allegedly disclosing Applicants' adhesive. Schmidt actually discloses a propylene adhesive with a minimum of 5 seconds of open time. In contrast, Applicants' claimed adhesive has an open time of between about 0.2 and 3 seconds (Claim 7) and about 0.5 and 2 seconds (Claim 8). Schmidt does not teach or suggest a shorter open time evidenced by the term **minimum**. One skilled in the art would not have a motivation to modify or an expectation of success to modify Mleziva in view of Morman, Gage and Schmidt to arrive at Applicants' claimed open time. Furthermore, Schmidt needs and favors the longer open time "to achieve adequate bonding." Column 4, lines 27 to 30. In contrast, Applicants' invention uses an adhesive with a short open time to further avoid roll blocking issues. Schmidt does not provide the limitations for which it is applied. Schmidt provides no teaching or motivation to modify, or any expectation of success, to modify Mleziva to arrive at Applicants' claimed invention.

For at least the reasons given above, Applicants respectfully submit that the teachings of Mleziva, Morman, Schmidt and Gage fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

#### B. Mleziva, Morman, Schmidt, Gage and Shawver

The rejection of Claim 25 under 35 U.S.C. §103(a) as being unpatentable over Mleziva in view of Morman, Schmidt, and Gage as applied to Claims 1-5, 7-13, 16-21 and 23-24 above, and in further view of Shawver et al. (U.S. Patent No. 6,909,028, hereinafter "Shawver") is respectfully traversed.

Claim 25 depends from independent Claim 1 and is patentable for at least the same reasons discussed above. The Examiner cites Shawver for disclosing necking. Despite any necking disclosure, Shawver still fails to overcome the deficiencies of Mleziva, Morman, Schmidt, and Gage in achieving Applicants' claimed invention.

For at least the reasons given above, Applicants respectfully submit that the teachings of Mleziva, Morman, Schmidt, Gage, and Shawver fail to disclose

Serial No.: 10/750,295

Docket No.: 19924

or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

### Double Patenting

#### A. Application Serial No. 11/011,439

The rejection of Claims 1-5, 7-13, 16-21 and 23-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 9 and 12 of co-pending U.S. Patent Application No. 11/011,439 is respectfully traversed.

Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is made between two or more co-pending applications, MPEP §804(I)(B) states that “[i]f a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the Examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer,” and “[i]f “provisional” ODP rejections in two applications are the only rejections remaining in those applications, the Examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer.”

Applicants believe that the current amendments to the independent claims now place all claims in condition for allowance. Since this application is the earlier-filed application (31 December 2003 versus 14 December 2004), Applicants respectfully request the Examiner to withdraw this provisional double patenting rejection and to permit this earlier-filed application to issue as a patent without a terminal disclaimer.

#### B. Application Serial No. 11/070,307

The rejection of Claims 1-5, 7-13, 16-21 and 23-25 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-20 of co-pending U.S. Patent Application No. 11/070,307 is respectfully traversed.

Serial No.: 10/750,295

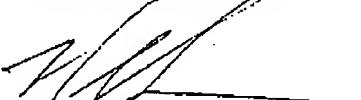
Docket No.: 19924

As explained above, Applicants believe that the current amendments of the independent claims in this case place all claims in condition for allowance. Since this application is the earlier-filed application (31 December 2003 versus 01 March 2005), Applicants respectfully request the Examiner to withdraw this provisional double patenting rejection and to permit this earlier-filed application to issue as a patent without a terminal disclaimer.

#### Conclusion

Applicants believe that the claims, as now presented, are in condition for allowance. Allowance of this application is respectfully requested. If the Examiner detects any unresolved issues, then Applicants' attorney respectfully requests a telephone call from the Examiner, and a telephone interview.

Respectfully submitted,



Mark D. Swanson  
Registration No. 48,498

Pauley Petersen & Erickson  
2800 West Higgins Road  
Suite 365  
Hoffman Estates, Illinois 60169  
(847) 490-1400  
FAX (847) 490-1403

KCC-1213

17

I/jpp